

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Ho	Team: Squad #3	CCRB Case #: 201508966	<input type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> O.L.	<input type="checkbox"/> U.S. <input type="checkbox"/> Injury
Incident Date(s) Tue, 10/20/2015 11:15 AM	Location of Incident: 218-03 93rd Avenue		Precinct: 105	S.O.L. Expires: 04/20/2017	
Date/Time CV Reported Wed, 10/21/2015 9:56 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/21/2015 9:56 AM		

Complainant/Victim	Type	Home Address
1. [REDACTED] Sr.	Reporting Non-Witness	[REDACTED]
2. [REDACTED] Jr.	Victim	[REDACTED]
3. J [REDACTED] S [REDACTED]	Victim	[REDACTED]
4. An individual	Victim	Unknown

Subject Officer(s)	Shield	TaxID	Command
1. POM Shawn Gallagher	01438	917655	105 PCT
2. POM Brian Sheil	08694	940734	105 PCT
3. SGT James Reilly	4143	937350	105 PCT
4. POM Paul Chierico	30661	936344	105 PCT
5. POM Paul Kearon	26316	948363	105 PCT
6. POM Matthew Levy	24321	943481	105 PCT
7. POM Joseph Manzella	04458	949251	105 PCT
8. An officer			105 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Matthew Levy	Abuse of Authority: PO Matthew Levy stopped [REDACTED] Jr.	A . Substantiated
B . POM Paul Chierico	Abuse of Authority: PO Paul Chierico stopped [REDACTED] Jr.	B . Substantiated
C . POM Matthew Levy	Abuse of Authority: PO Matthew Levy stopped J [REDACTED] S [REDACTED] [REDACTED]	C . Substantiated
D . POM Paul Chierico	Abuse of Authority: PO Paul Chierico stopped J [REDACTED] S [REDACTED] [REDACTED]	D . Substantiated
E . POM Matthew Levy	Abuse of Authority: PO Matthew Levy frisked [REDACTED] Jr.	E . Substantiated
F . POM Paul Chierico	Abuse of Authority: PO Paul Chierico frisked an individual.	F . Substantiated
G . POM Matthew Levy	Abuse of Authority: PO Matthew Levy searched [REDACTED] Jr.	G . Unsubstantiated
H . POM Paul Chierico	Abuse of Authority: PO Paul Chierico entered and searched the yard of [REDACTED]	H . Substantiated
I . POM Paul Chierico	Abuse of Authority: PO Paul Chierico entered and searched the garage of [REDACTED]	I . Unsubstantiated
J . SGT James Reilly	Abuse of Authority: Sgt. James Reilly entered and searched the yard of [REDACTED]	J . Substantiated

<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>
K . SGT James Reilly	Abuse of Authority: Sgt. James Reilly entered and searched an RV at [REDACTED]	K . Unsubstantiated
L . SGT James Reilly	Abuse of Authority: Sgt. James Reilly entered and searched the garage of [REDACTED]	L . Unsubstantiated
M . SGT James Reilly	Discourtesy: Sgt. James Reilly spoke discourteously to [REDACTED] Jr.	M . Unsubstantiated
N . An officer	Abuse of Authority: An officer interfered with J [REDACTED] S [REDACTED] use of a recording device.	N . Alleged Victim Unavailable
O . An officer	Abuse of Authority: An officer threatened to arrest J [REDACTED] S [REDACTED]	O . Alleged Victim Unavailable
P . POM Shawn Gallagher	Abuse of Authority: PO Shawn Gallagher searched J [REDACTED] S [REDACTED]	P . Unsubstantiated
Q . An officer	Discourtesy: An officer acted discourteously toward J [REDACTED] S [REDACTED]	Q . Alleged Victim Unavailable
R . POM Matthew Levy	Other: PO Matthew Levy failed to prepare a memo book as required.	R . Other Misconduct
S . POM Paul Chierico	Other: PO Paul Chierico failed to prepare a memo book entry as required.	S . Other Misconduct
T . SGT James Reilly	Other: Sgt. James Reilly failed to prepare a memo book entry as required.	T . Other Misconduct
U . POM Paul Kearon	Other: PO Paul Kearon failed to prepare a memo book entry as required.	U . Other Misconduct
V . POM Joseph Manzella	Other: PO Joseph Manzella failed to prepare a memo book as required.	V . Other Misconduct
W . POM Brian Sheil	Other: PO Brian Sheil failed to prepare a memo book entry as required.	W . Other Misconduct
X . POM Matthew Levy	Other: PO Matthew Levy failed to prepare a stop and frisk report as required.	X . Other Misconduct
Y . POM Paul Chierico	Other: PO Paul Chierico failed to prepare a stop and frisk report as required.	Y . Other Misconduct

### Case Summary

[REDACTED] Sr. filed this complaint on behalf of his son [REDACTED] Jr. with the CCRB via telephone on October 21, 2015, generating log #15-36581. The complaint was subsequently referred to the CCRB, which received it on November 30, 2015.

On October 20, 2015, at 11:15 a.m., [REDACTED] Jr. was outside his home at [REDACTED] in Queens waiting for his friend J [REDACTED] S [REDACTED] to pick him up. As [REDACTED] Jr. stood in the gated area of his driveway, he observed two plainclothes officers – PO Paul Chierico and PO Matthew Levy of the 105<sup>th</sup> Precinct approach him in an unmarked vehicle. PO Chierico and PO Levy exited their vehicle and PO Levy told [REDACTED] Jr. to exit the gated area. [REDACTED] Jr. asked him why, and if the officers had a warrant. Again, PO Levy told [REDACTED] Jr. to get out of the gated area. This time, [REDACTED] Jr. exited his front gate (**Allegations A and B**). According to the officers, J [REDACTED] S [REDACTED] was with [REDACTED] Jr. at the time he was stopped (**Allegations C and D**). PO Levy frisked [REDACTED] Jr. and then went into his front pockets (**Allegations E and G**). Meanwhile, PO Chierico frisked an individual (**Allegation F**). Then, [REDACTED] Jr. saw that PO Chierico was in the gated area of the front yard looking around (**Allegation H**). PO Chierico also searched the adjoining garage to the property (**Allegation I**).

PO Levy told [REDACTED] Jr. to stay as more uniformed and plainclothes officers arrived and the plainclothes officers entered the gated area of the yard to search the RV, the garage, and his backyard (**Allegations J, K, and L**). When [REDACTED] Jr. asked the officers if they had a warrant, Sgt. James Reilly said to him, “Oh, I’m gonna get a fucking warrant!” (**Allegation M**). An officer told J [REDACTED] S [REDACTED] to stop recording with his cell phone, and threatened to arrest him if he did not delete it (**Allegations N and O**). Then, PO Shawn Gallagher searched Mr. S [REDACTED] (**Allegation P**). An officer removed Mr. S [REDACTED]’s Metro Card from his wallet and threw it on the ground (**Allegation Q**). PO Gallagher issued Mr. S [REDACTED] a summons for marijuana and another for littering. PO Levy, PO Chierico, Sgt. Reilly, PO Paul Kearon, and PO Brian Sheil are cited for other misconduct (**Allegations R, S, T, U, V, W, X, and Y**).

There is no video footage of this incident. This case is being submitted after the 90-day benchmark due to attempts to find J [REDACTED] S [REDACTED] and delays obtaining police documents. APU Attorney Jonathan Fogel was consulted with at the conclusion of the investigation.

### Mediation, Civil and Criminal Conviction Histories

- Mediation was offered to and accepted by [REDACTED] Jr. However, due to delays in identifying the officers and concerns that [REDACTED] Jr. had become unreachable to schedule a mediation session, it was determined by Investigative Manager Dane Buchanan that the case should be investigated.
- [REDACTED] Sr., [REDACTED] Jr., and J [REDACTED] S [REDACTED] have not filed a Notice of Claim with the City of New York as of March 1, 2016 with regard to the incident.
- Case number 2015SQ060107 in regards to summons numbers 4423080054 and 4423080068 remain open. There is no pending court date but a warrant was issued for J [REDACTED] S [REDACTED] on December 11, 2015 [NYPD 06].
- As of March 4, 2016, Office of Court Administration records reveal no criminal convictions for [REDACTED] Sr., [REDACTED] Jr., and J [REDACTED] S [REDACTED] [NYPD 06].

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by [REDACTED] Sr. [BR 09]
- [REDACTED] Jr. and J [REDACTED] S [REDACTED] have previously never filed a CCRB complaint [BR 09].
- PO Matthew Levy has been a member of the service for 9 years and there are no substantiated CCRB allegations against him.

- PO Paul Chierico has been a member of the service for 11 and there are 8 substantiated CCRB allegations against him.
  - In case 201407041, allegations of physical force, property damage, and retaliatory arrest were substantiated; charges were recommended and the NYPD has not yet reached a disposition.
  - In case 201501778, allegations of physical force, preventing an individual from recording an incident, and three stops were substantiated; command discipline B was recommended and the NYPD has not yet reached a disposition.
- Sgt. James Reilly has been a member of the service for 11 years and this is the first CCRB complaint against him.
- PO Paul Kearon has been a member of the service for 6 years and there are 3 substantiated CCRB allegations against him.
  - In case 201508895, allegations of stop, frisk, and search were substantiated; charges were recommended and the NYPD has not yet reached a disposition.
- PO Joseph Manzella has been a member of the service for 5 years and this is the first CCRB complaint against him.
- PO Shawn Gallagher has been a member of the service for 19 years and there is 1 substantiated CCRB allegation against him.
  - In case 200702766, an allegation of retaliatory summons was substantiated; charges was recommended and PO Gallagher was penalized with instruction.
- PO Brian Sheil has been a member of the service for 10 years and this is the first CCRB complaint against him.

#### Potential Issues

- [REDACTED] Jr. could only provide a first name for Mr. S [REDACTED] and did not know the spelling of the name or have any contact information for him. LexisNexis and Clear database searches for Mr. S [REDACTED] did not aide in providing additional contact information for Mr. S [REDACTED]. The undersigned mailed three letters to the address provided on the summons issued to Mr. S [REDACTED]. To date, Mr. S [REDACTED] has not contacted the undersigned and no letters have been returned by the USPS. Consequently, the investigation does not have a verified statement from him.
- [REDACTED] Sr. and [REDACTED] Jr. did not provide the investigation with contact numbers to reach them at. To date, [REDACTED] Jr. has not responded to any of the emails or letters sent to him requesting he call the undersigned for a follow-up conversation. The investigation was unable to identify the other individuals stopped by PO Chierico and PO Levy because [REDACTED] Jr. did not note the presence of other civilians and could not be reached to provide additional information.

#### Finding and Recommendations

##### Allegations Not Pleaded

- **Threat to damage property:** During the intake call, [REDACTED] Jr. alleged an officer threatened to break Mr. S [REDACTED]'s phone. As [REDACTED] Jr. did not allege this in his formal statement, it has not been pleaded.

##### Explanation of Subject Officer Identification

- **Allegations J, K, and L:** [REDACTED] Jr. alleged that several officers searched his yard, his garage, and the RV parked on the property. As the supervisor on scene, it was Sgt. Reilly's responsibility to ensure his officers adhered to city and state penal law as well as NYPD agency guidelines. Consequently, allegations J, K, and L are pleaded against Sgt. Reilly.

- **Allegations N, O, and Q:** [REDACTED] Jr. could not describe the officer who allegedly ordered Mr. S [REDACTED] to stop recording or the officer who allegedly threw Mr. S [REDACTED]'s Metro Card on the ground. As the investigation was unable to obtain a statement from Mr. S [REDACTED], allegations N, O, and Q have been pleaded against "an officer" from the 105<sup>th</sup> Precinct.

#### **Recommendations**

- **Allegation A – Abuse of Authority: PO Matthew Levy stopped [REDACTED] Jr.**
- **Allegation B – Abuse of Authority: PO Paul Chierico stopped [REDACTED] Jr.**
- **Allegation C – Abuse of Authority: PO Matthew Levy stopped J [REDACTED] S [REDACTED]**
- **Allegation D – Abuse of Authority: PO Paul Chierico stopped J [REDACTED] S [REDACTED]**

[REDACTED] Jr. alleged he was standing in front of his house waiting for Mr. S [REDACTED] to pick him up so they could drive to Long Island for work together when PO Levy and PO Chierico stopped their vehicle in front of his house and PO Levy ordered him to step out from the gated area of his front lawn [BR 01]. [REDACTED] Jr. was the only person home at the time. [REDACTED] Jr. asked PO Levy why, and if the officers had a warrant. Again, PO Levy told [REDACTED] Jr. to get out of the gated area. This time, [REDACTED] Jr. complied. Mr. S [REDACTED] arrived shortly after officers had [REDACTED] Jr. stopped. [REDACTED] Jr. explained that Mr. S [REDACTED] did not drive to his house, but walked to his house to pick him up. Conversely, in [REDACTED] Jr.'s initial statement, he noted Mr. S [REDACTED] unexpectedly arrived during the incident to tell [REDACTED] Jr. that he had a job for him [see 245]. Upon seeing Mr. S [REDACTED], one of the officers stated over the radio, "I got two suspects." [REDACTED] Jr. estimated it took another five minutes for additional units to arrive at his home. In that time, PO Levy informed [REDACTED] Jr. that officers were searching for a burglar in the area.

PO Levy explained that there is a burglary condition in the vicinity of [REDACTED], [BR 06]. PO Levy observed three to four males "moving around suspiciously" as they exited a backyard towards the gate of the chain-link fence at 11:15 a.m. on a weekday. PO Levy stopped the RMP and then backed up the vehicle to stop alongside the backyard; he and PO Chierico exited the RMP, identified themselves as police officers, and ordered the individuals to stop. At this point, one or two of the individuals had already exited the backyard onto the sidewalk; but upon hearing the officers' command, the individuals all ran back into the yard. When PO Levy and PO Chierico told the individuals to stop a second time, they ran further into the backyard. Without entering the backyard to go after them, PO Levy and PO Chierico ordered the individuals out of the backyard a third time and they complied. PO Levy observed one of the individual's in the yard throw a silver metallic object to the ground, and speculated it was a firearm because he heard a "clink" sound as it landed. PO Levy did not see the object from where he was standing and believed it landed on the grass.

PO Chierico confirmed that there is a burglary condition in the vicinity of [REDACTED] [BR 04]. PO Chierico stated he observed two to five males in their early twenties in the rear yard of [REDACTED] from the RMP for ten seconds before PO Levy stopped the vehicle. PO Chierico suspected them of burglary because within those ten seconds, the individuals had motioned to run when they saw PO Chierico and PO Levy. As they scattered in the enclosed yard in different directions, an individual discarded an object to the ground. The object made a metallic "clank" sound as it hit the ground, which led PO Chierico to suspect that all the men may have been armed. PO Chierico and PO Levy were able to stop the men and detain them by issuing verbal commands. PO Chierico entered a few feet into the yard in order to order the men outside and had them detained on the sidewalk adjacent to the yard entrance. PO Chierico was able to describe the grinder as a metal object roughly two inches by two inches in size.

In People v. Debour, 40 N.Y.2d 210 (1976) the courts have established that an officer may approach a citizen in a non-threatening way to request information when there is some objective credible reason for that interference not necessarily indicative of criminality (aka, a “level one” interaction) [BR 14]. At a level one interaction, an individual is free to walk away from officers. Questioning becomes more ‘pointed’ under a common-law inquiry (aka, a “level two” interaction), which must be supported by a founded suspicion that criminality is afoot; however, innocuous or even equivocal behavior does not generate a founded suspicion of criminality. Officers can use reasonable force to stop and detain an individual whenever they have a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime (aka, a “level three” interaction). Flight from the police during a level one interaction does not give rise to reasonable suspicion that an individual has committed or is about to commit a crime. People v. Madera, 189 A.D.2d [BR 15]. People v. Terracciano 135 AD 2d 849 (1987) established that since the officers did not have the requisite founded suspicion to question the defendant, the property discarded by the defendant was not abandoned as his conduct in discarding the objects was “a spontaneous reaction to a sudden and unexpected confrontation with the police” rather than “an independent act involving a calculated risk” and did not provide justification for the officers’ subsequent pursuit [BR 16].

In applying Debour, before PO Chierico and PO Levy could conduct a level two questioning of [REDACTED] Jr. and Mr. [REDACTED] pursuant to the common-law right to inquire, the individuals’ conduct must provide officers with the necessary objective credible reason to justify founded suspicion that criminal activity is present. Despite presence in what PO Levy and PO Chierico alleged to be high-burglary neighborhood, the officers had received no reports of a burglary and did not observe the individuals in the act of committing a burglary or another crime, and could not describe any other furtive conduct beyond a group of young men congregating in a yard in the daytime. The fact that the officers’ had an unspecified hunch that something was going on does not raise suspicion to a level where the officers could have founded suspicion that they were engaged in criminal activity. Debour. At most, the officers had an articulable reason to approach the individuals to conduct a level one interaction.

Secondly, in order to authorize the more significant intrusion that resulted, a more substantial predicate was required. When viewed as a whole, the civilians’ startled reaction at the sight of the officers and their scattering is innocuous behavior, which does not generate a founded suspicion that a crime was at hand. Additionally, at the level of suspicion the officers had, the civilians had the right to avoid or ignore the officers. As PO Chierico and PO Levy explained, the individuals dispersed in an enclosed compound, and were not actively fleeing to the point where the officers needed to pursue them to detain them. Based on the paucity of information available to the officers from their observations, the individuals’ “flight” does not establish the necessary reasonable suspicion of their criminality. Madera.

Lastly, the officers did not know who discarded the marijuana grinder, which they presumed was a weapon. Here, PO Levy observed one of the individual’s in the enclosed yard throw the unknown object, which he presumed to be a firearm, somewhere in the yard after three orders were issued to them to come out. At the time, officers did not have reasonable suspicion or even founded suspicion of criminality. Because the unknown individual discarded the item which made a metallic sound (‘clank’) as it hit the ground, PO Chierico suspected all the men to have been armed. Not only is a grinder which was described by PO Chierico to be only two inches by two inches not easily confused with a firearm, but PO Levy also noted that the object landed on grass, which makes it unlikely that the grinder would have made a ‘clank’ on contact with the ground. As noted by Terracciano, without initially having founded suspicion, the additional

factor of an individual discarding an object does not raise the interaction to a level of reasonable suspicion to justify a stop.

Here, PO Chierico and PO Levy's own testimonies indicate that they only possessed an articulable reason to approach [REDACTED] Jr. and Mr. S [REDACTED] and that the civilians' reactions to the officers' attempts to engage them did not provide reasonable suspicion. Consequently, the officers did not have the necessary predicate for a stop. Because PO Levy and PO Chierico lacked justification to stop [REDACTED] Jr. and Mr. S [REDACTED], it is recommended that **Allegations A, B, C, and D** be substantiated.

- **Allegation E – Abuse of Authority: PO Matthew Levy frisked [REDACTED] Jr.**
- **Allegation F – Abuse of Authority: PO Paul Chierico frisked an individual.**

[REDACTED] Jr. did not allege he or anyone else was frisked in his initial statement [see 245]. In his formal testimony, [REDACTED] Jr. alleged PO Levy had him put his hands up on the gate of the property and spread his legs [BR 01]. PO Levy frisked [REDACTED] Jr., starting from his neck down to his feet, and then felt around his waistband. [REDACTED] Jr. did not allege anyone else was frisked by a plainclothes officer.

As the individuals were being stopped, PO Levy observed one of the individual's throw a silver metallic object to the ground, and speculated it was a firearm because he heard a "clink" sound as it landed [BR 06]. PO Levy did not see the object from where he was standing and believed it landed on the grass. Because the individuals wore baggy clothing, PO Levy could not tell whether the bulges on the sides of their pants were formed by firearms. The individuals complied with PO Levy and PO Chierico's verbal commands to be stopped. PO Levy and PO Chierico waited until the rest of the anti-crime team and the school unit arrived to frisk the stopped individuals. PO Levy did not remember which individual he frisked. PO Levy could not tell what formed the bulges when he conducted the frisk and denied feeling any long, hard objects or weapons. PO Levy noted [REDACTED] Jr. appeared to be high as he was giggling a lot and told the officers he had just smoked.

While effecting the stop, PO Chierico observed an individual discard an object as he moved to exit from the yard [BR 04]. The object made a metallic "clank" sound as it hit the ground which led PO Chierico to suspect that all the men may have been armed. The stopped individuals were cooperative in obeying PO Chierico and PO Levy's verbal commands to stop, and after the rest of the anti-crime team arrived, cooperated in producing their identification. PO Chierico, PO Levy, and another anti-crime officer proceeded to frisk the stopped individuals. PO Chierico did not remember which male he frisked. PO Chierico frisked along the detained individual's body and around his waistband – anywhere where a weapon could be concealed. PO Chierico did not recall observing any bulges and did not enter any pockets. PO Chierico did not locate anything during this frisk. PO Chierico did not recall if he observed anything suspicious on the individual he frisked prior to the stop. PO Chierico stated that he felt concern for his safety due to the object that had been thrown prior to the stop and because the stop was related to a burglary investigation, and noted that burglary is a violent crime.

In the course of an investigatory stop, a police officer may frisk the person so detained if he has a reasonable suspicion that he is in danger of physical injury because the person is armed. CPL 140.50(3) [BR 22]. To determine whether an officer had reasonable suspicion to suspect an individual is armed and presently dangerous, the officer may not rely on an 'inchoate and unparticularized suspicion or 'hunch.'" United States v. Jackson, 2015 U.S. Dist. LEXIS 98980 [BR 23]. Moreover, for a bulge in a suspect's clothing to justify a frisk, the bulge's size, shape, and placement must support the conclusion that the bulge is a weapon. An unidentifiable bulge

which is readily susceptible of an innocent as well as a guilty explanation is not sufficient to justify a frisk. People v. Harris, 20 Misc.3d 1126(A) (N.Y.Crim. St. 2008) [BR 24].

PO Levy and PO Chierico observed two to four individuals standing in a yard in a neighborhood allegedly with a burglary condition and approached them. PO Levy and PO Chierico were not operating in light of a recent burglary with suspects at large or canvassing with a general description of the burglars; the officers had no other indication specific to [REDACTED] Jr. or the other individuals stopped to suspect that they possessed a weapon. As discussed above, the officers did not have reasonable suspicion that they were engaging in the violent crime of burglary. PO Levy and PO Chierico did not observe the individuals acting in a belligerent or hostile manner and did not see them make any hand motions consistent with being armed. PO Levy and PO Chierico could not articulate any specific reason for suspecting the stopped individuals were armed beyond the simple fact that they observed the presence of ambiguous bulges on their loose clothing, and that there is the general possibility that anyone can be armed. The officers failed to observe a bulge or something heavy that might indicate the possession of a weapon. Moreover, PO Levy and PO Chierico waited until the arrival of at least five additional officers, thereby outnumbering the stopped individuals and eliminating any fears for their safety, to frisk the stopped individuals. Yet, PO Levy and PO Chierico still patted down the individuals, which did not result in the finding of any objects that could be confused with a weapon.

The investigation finds the officers had no reasonable suspicion to suspect or fear that the individuals were armed. Consequently, the frisks were not justified and it is recommended that **Allegations E and F** be closed as **substantiated**.

- **Allegation G – Abuse of Authority: PO Matthew Levy searched [REDACTED] Jr.**  
[REDACTED] Jr. alleged that after he was frisked, PO Levy searched his front pants pockets [BR 01]. PO Levy denied having entered the pockets of any of the individuals stopped [BR 06]. PO Chierico confirmed they did not enter the pockets of any of the individuals they frisked [BR 04]. Because the investigation could not determine by a preponderance of evidence if [REDACTED] Jr. was searched, it is recommended that **Allegation G** closed as **unsubstantiated**.

- **Allegation H – Abuse of Authority: PO Paul Chierico entered and searched the yard of [REDACTED]**
- **Allegation J – Abuse of Authority: Sgt. James Reilly entered and searched the yard of [REDACTED]**

While [REDACTED] Jr. was being frisked and searched by PO Levy on the sidewalk, PO Chierico was searching for something on the front lawn of the house [BR 01]. When Sgt. Reilly, PO Kearon and PO Manzella arrived, [REDACTED] Jr. heard PO Chierico direct them to keep searching the property. Sgt. Reilly also directed everyone on what to do and where to search.

PO Chierico stated he entered a few feet into the yard in order to order the men outside and had them detained on the sidewalk adjacent to the yard entrance [BR 04]. PO Chierico denied having retrieved the grinder and did not know who retrieved it or at what point during the stop it was retrieved from the lawn. PO Chierico noted that Sgt. Reilly, PO Kearon, and PO Manzella arrived at the beginning of the stop, as PO Levy was collecting the individuals' identifications.

PO Levy stated he and PO Chierico did not have to enter the backyard to go after the individuals they were attempting to stop [BR 06]. The individuals had complied with their verbal commands and exited the yard on their own. PO Levy observed other officers from the additional units (the remainder of the anti-crime team: Sgt. Reilly, PO Kearon, and PO Manzella; and a school-unit: PO Gallagher and PO Sheil) search the immediate area of the lawn and retrieve the silver metallic marijuana grinder Mr. S [REDACTED] discarded.

Upon PO Gallagher's arrival, he was informed by PO Chierico and PO Levy they had stopped individuals for a possible burglary and upon stepping out from their vehicle to approach them, observed one of the individuals throw a metal object from his hand or pocket onto the lawn of [REDACTED] [BR 02]. PO Gallagher and PO Sheil were instructed by PO Chierico and PO Levy to watch over the stopped individuals while they 'secured the scene.' PO Gallagher stated that officers from the anti-crime team went onto the lawn to retrieve the object.

It was explained to PO Sheil by PO Chierico and PO Levy that they had been observing the individuals from their vehicle as the individuals walked by [REDACTED] and walked onto the yard towards the garage. The individuals appeared suspicious to the anti-crime officers, as if they were about to commit a robbery, so the anti-crime officers stopped them [BR 03]. PO Chierico and PO Levy instructed PO Sheil and PO Gallagher to watch over the individuals they had stopped while they searched the enclosed yard for an item one of the individual's had dropped. PO Sheil did not remember if Sgt. Reilly, PO Kearon, and PO Manzella had arrived yet and if they participated in the search on the lawn as well.

When Sgt. Reilly arrived, he approached PO Chierico and PO Levy to ask them what had occurred [BR 08]. One of the two informed Sgt. Reilly they had observed a group of males inside the enclosed yard of [REDACTED] standing by the window. Sgt. Reilly explained there have been multiple burglaries in the area so their behavior appeared suspicious to PO Levy and PO Chierico. When PO Chierico and PO Levy went to approach the males, the males attempted to leave. PO Chierico and PO Levy were able to stop the males on the sidewalk in front of the allegedly targeted property. They observed one of the individuals discard a metal marijuana grinder on the lawn prior to walking off the property. Sgt. Reilly did not know where the marijuana grinder had been thrown, did not know which officer recovered it, and did not know if that officer entered the fenced area of the property to retrieve it. Sgt. Reilly clarified that this all occurred prior to his arrival. Sgt. Reilly did not believe he entered the fenced in area of the property and did not observe any other officer enter the fenced area.

Upon his arrival, PO Manzella learned from PO Chierico that the individuals were stopped for smoking marijuana, and that one of them had dropped a marijuana grinder on the ground [BR 05]. PO Manzella did not know if the marijuana grinder had been recovered and did not observe the marijuana grinder at all during the incident. PO Manzella denied having entered the gated lawn and did not observe any officer on the lawn.

Upon his arrival, PO Kearon was informed that the individuals who were stopped were seen on the property and at the sight of the officers, quickly changed direction and discarded a hard metallic object on the ground. PO Kearon did not know whether the individuals had been on the property and did not know where the object was thrown. PO Kearon did not remember if it was recovered in his presence; he denied having stepped onto the lawn and did not retrieve the discarded object.

According to People v. Morris 126 A.D.3d 813 (2015), the curtilage of the home, defined as the area immediately surrounding and associated with the home or the area that is related to the intimate activities of the home (including a completely fenced-in front yard located in close proximity to the home) – is part of the home itself [BR 17]. The courts have established that warrantless entries into private homes are presumed unconstitutional. Exceptions to this rule include consent, as established in People v. Davis 120 A.D.2d 606 (1986) [BR 18], hot pursuit, as established in People v. Skinner, 284 A.D.2d 906 (2001) [BR 19], exigent circumstances, as established in People v. McBride, 14 N.Y.3d 440 (2010) [BR 20], and an emergency situation, as established in People v. Greenleaf, 222 A.D.2d 838 (1995) [BR 21]. The courts have held that in order for the hot pursuit exception to exist, officers must have probable cause to arrest an

individual while he or she is outside the private location to be entered and the arrest must have been set in motion in a public place, prior to the individual's flight into the private location. Skinner. In regards to the exigent circumstances exception, the courts utilize a six-part test: "(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause...to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry." McBride. In regards to emergency circumstances, the courts utilize a three-part test: "(1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) The search must not be primarily motivated by intent to arrest and seize evidence; (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." Greenleaf.

On the basis of PO Chierico's account of the incident, he admitted to entering the curtilage without consent in a non-threatening and non-emergency situation with the intent to stop the individuals he and PO Levy initially observed already within the enclosed area. PO Chierico noted that Sgt. Reilly, PO Kearon, and PO Manzella arrived at the beginning of the stop and PO Levy added that their back-up officers proceeded to enter the enclosed yard and search it. With PO Gallagher and PO Sheil confirming that anti-crime officers searched the yard to retrieve the grinder from the yard, there is a preponderance of evidence to support [REDACTED] Jr.'s allegations that the yard was searched first by PO Chierico prior to the other officers' arrival and that it was searched again by officers while under the supervision of Sgt. Reilly.

In applying the principles of the aforementioned decisions, the officers' entry onto the curtilage cannot be vindicated because the situation did not give rise to exigent circumstances to justify a warrantless entry. PO Chierico and PO Levy had no reasonable suspicions the individuals were going to commit/were committing/had committed a crime. Furthermore, the officers did not have reasonable grounds to believe an emergency occurred at the location and that their assistance was necessary for the protection of life. Therefore, it can be reasonably deduced that there was insufficient justification for officers to enter the curtilage of [REDACTED] in Queens without permission or a warrant.

The investigation found that PO Chierico did not have probable cause to believe the individuals committed a violent crime or that circumstances of the situation gave rise to hot pursuit, exigent circumstances, or an emergency situation to justify their warrantless entry onto the curtilage of [REDACTED]. It was further determined by a preponderance of evidence that Sgt. Reilly was present to supervise another search of the curtilage without the requisite justification. Thus, it is recommended that **Allegations H and J** be closed as **substantiated**.

- **Allegation I – Abuse of Authority: PO Paul Chierico entered and searched the garage of [REDACTED] in Queens.**
- **Allegation K – Abuse of Authority: Sgt. James Reilly entered and searched an RV at [REDACTED] in Queens.**
- **Allegation L – Abuse of Authority: Sgt. James Reilly entered and searched the garage of [REDACTED] in Queens.**

In his initial telephone statement, [REDACTED] Jr. generally stated officers had entered the RV and searched the garage [see 245]. [REDACTED] Jr. explained in his formal statement that while he was being frisked and searched by PO Levy on the sidewalk, PO Chierico was looking around the RV parked on the front lawn of the house; [REDACTED] Jr. was unsure if PO Chierico entered the RV at this time [BR 01]. Then, PO Chierico opened the garage door and searched the garage. When

Sgt. Reilly arrived with PO Kearon and PO Manzella, [REDACTED] Jr. heard PO Chierico direct them to keep searching the property. After officers left, [REDACTED] noticed officers had ransacked the RV during their search in it.

As all officers denied the alleged allegations, the investigation could not determine by a preponderance of evidence if the RV and garage were searched. Consequently, it is recommended that **Allegations I, K, and L** be closed as **unsubstantiated**.

- **Allegation M – Discourtesy: Sgt. James Reilly spoke discourteously to [REDACTED] Jr.**

In his initial telephone statement, [REDACTED] Jr. alleged when he was being stopped, he asked PO Levy and PO Chierico what was going on and if they had a search warrant. One of them told him, "We don't need no fucking warrant. Get out of the gate" [see 245]. But in his formal statement, [REDACTED] Jr. alleged when he asked officers if they had a warrant, Sgt. Reilly replied, "Oh, I'm gonna get a fucking warrant!" [BR 01].

Sgt. Reilly denied making the alleged statement [BR 08]. As all officers denied hearing Sgt. Reilly make the alleged statement, the investigation could not determine by a preponderance of evidence if Sgt. Reilly spoke discourteously to [REDACTED] Jr. Consequently, it is recommended that **Allegation M** closed as **unsubstantiated**.

- **Allegation N – Abuse of Authority: An officer interfered with J [REDACTED] S [REDACTED]’s use of a recording device.**
- **Allegation O – Abuse of Authority: An officer threatened to arrest J [REDACTED] S [REDACTED]**
- **Allegation Q – Discourtesy: An officer acted discourteously to J [REDACTED] S [REDACTED]**

[REDACTED] Jr. alleged he observed an officer whom he could not describe tell Mr. S [REDACTED] to stop recording with his cell phone and threaten to arrest him if he did not delete it [BR 01]. In addition, [REDACTED] Jr. alleged he observed an officer remove Mr. S [REDACTED]’s Metro Card from his wallet and throw it on the ground.

Because Mr. S [REDACTED] could not be contacted by the investigation to provide a sworn statement about the incident and [REDACTED] Jr. could not describe the officer, it is recommended that **Allegations N, O and Q** be closed as **victim unavailable**.

- **Allegation P – Abuse of Authority: PO Shawn Gallagher searched J [REDACTED] S [REDACTED]**
- [REDACTED] Jr. alleged he observed PO Gallagher tell Mr. S [REDACTED] to spread his legs and then proceeded to search him [BR 01]. [REDACTED] Jr. did not specify where PO Gallagher searched.

PO Gallagher denied having searched Mr. S [REDACTED] and explained that it was only his job to assist the anti-crime team by watching over the individuals who were stopped [BR 02]. PO Gallagher further stated that any suspicion of whether the individuals stopped had weapons was not up to him, but the anti-crime officers.

Because Mr. S [REDACTED] could not be contacted by the investigation to provide a sworn statement about the incident and no other officer could corroborate [REDACTED] Jr.’s version of events, the investigation could not determine by a preponderance of evidence if Mr. S [REDACTED] was searched. Consequently, it is recommended that **Allegation P** be closed as **unsubstantiated**.

- **Allegation R – Other: PO Matthew Levy failed to prepare a memo book entry as required.**
- **Allegation S – Other: PO Paul Chierico failed to prepare a memo book entry as required.**
- **Allegation T – Other: Sgt. James Reilly failed to prepare a memo book entry as required.**

- **Allegation U – Other: PO Paul Kearon failed to prepare a memo book entry as required.**
- **Allegation V – Other: PO Joseph Manzella failed to prepare a memo book entry as required.**
- **Allegation W – Other: PO Brian Sheil failed to prepare a memo book entry as required.**

The investigation determined that PO Levy and PO Chierico stopped [REDACTED] Jr. and Mr. [REDACTED] [REDACTED] and that Sgt. Reilly, PO Kearon, PO Manzella and PO Sheil also participated in the stop. According to Patrol Guide §212-08, all police officers are required to record in chronological order, “information pertinent to an assignment or observed/suspected violation of law, i.e. action taken, narrative disposition, forms prepared with identifying serial number, etc.” in their activity logs on the lined pages and are to utilize their fly pages for notes, diagrams, or sketches when necessary [BR 12]. Because Sgt. Reilly, PO Kearon, and PO Sheil failed to prepare a memo book entry as required by Patrol Guide §212-08 and PO Levy, PO Chierico, and PO Manzella failed to note their police actions on the lined pages of their memo books in chronological order, it is recommended that **Allegations R, S, T, U, V and W** be noted as *other misconduct*.

- **Allegation X – Other: PO Matthew Levy failed to produce a stop and frisk report for the incident.**
- **Allegation Y – Other: PO Paul Chierico failed to produce a stop and frisk report for the incident.**

It is undisputed that PO Levy and PO Chierico initiated the stop of the individuals and each frisked at least one them but denied preparing stop and frisk reports.

NYPD Patrol Guide §212-11 requires officers to prepare a stop, question and frisk report every time that they perform a stop, which is defined as the temporary detainment of a person for questioning [BR 13]. A stop, question and frisk report is not prepared when the officer makes a summary arrest or issues a summons for an observed violation unless the suspect was initially stopped for investigation based on reasonable suspicion.

Although [REDACTED] Jr. and Mr. [REDACTED] were initially stopped for suspicion of burglary and Mr. [REDACTED] was issued a summons for littering and possession of marijuana and the officers stated other individuals were stopped as well, no UF-250 reports were prepared for the incident. Because PO Levy and PO Chierico failed to comply with the above-referenced procedure, it is recommended that **Allegations X and Y** be noted as *other misconduct*.

Squad: 3

Investigator: \_\_\_\_\_ Rebecca Ho \_\_\_\_\_ 03/21/2016  
 Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Supervisor: \_\_\_\_\_ Dane Buchanan \_\_\_\_\_  
 Title/Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Reviewer: \_\_\_\_\_  
 Title/Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Reviewer: \_\_\_\_\_  
 Title/Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_